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VIA TELECOPY AND CERTIFIED MAIL

Mr. Robert Oberthaler, Chief
Bureau of Industrial Discharge Permits
New Jersey Department of Environmental
Protection & Energy
Bureau of Industrial Discharge Permits
CN 029
401 East State Street
Trenton, NJ 08625

Re: Hexcel Corporation
NJPDDES/SIU Permit (Draft Permit No. NJ0081507)
205 Main Street
Lodi, NJ 07644-0687
ECRA Case No. 86009
Our File No. 03597.17140

Dear Mr. Oberthaler:

As you may be aware, our firm has been retained as environmental counsel to Hexcel Corporation ("Hexcel") regarding its ongoing efforts to comply with its obligations under the New Jersey Environmental Cleanup Responsibility Act (ECRA), NJSA 13:1K-6 et seq. (Regulations: NJAC 7:26B-1.1 et seq.). In order to comply with these ECRA requirements, Hexcel will have to discharge treated groundwater to the Passaic Valley Sewage Commission (PVSC). Hexcel has been told by the New Jersey Department of Environmental Protection and Energy ("NJDEPE" or "Department") that this discharge will require a New Jersey

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Pollutant Discharge Elimination System/Significant Indirect User (NJPDES/SIU) permit. Hexcel made its present NJPDES permit application in January 1991. In spite of Hexcel's timely submissions and responses, the NJPDES/SIU permit is yet to be issued in final form. Furthermore, we have recently been advised that Hexcel will no longer require an individual NJPDES permit to discharge and will instead be covered by a permit-by-rule. Issuance of this general permit will presumably take many months as it makes its way through the Department and public review and comment process.

We write this letter on Hexcel's behalf to strongly object to the undue and unjustifiable delay which the NJDEPE has caused in issuing this permit and request either the finalization of the draft NJPDES permit (No. NJ0081507) which was first publicly noticed on December 17, 1991 or confirmation of temporary exemption from obtaining a NJPDES/SIU permit. Without this, Hexcel cannot move forward with its ECRA obligations. Additionally, the NJDEPE is unable to complete and close this ECRA case.

Background

Hexcel is seeking a NJPDES/SIU permit in order to discharge treated groundwater. The decontamination of groundwater is required as part of ECRA case number 86009. This ECRA case was triggered on or about March 31, 1986 when Hexcel Corporation sold assets including property and manufacturing facility at 205 Main Street, Lodi, NJ (Facility) to the FOA Corporation (which shortly thereafter changed its name to the Fine Organics Corporation). In compliance with the requirements of ECRA, Hexcel undertook to complete a remediation plan for the site including the clean up of contaminated soil and groundwater. On March 26, 1986 Hexcel entered into an Administrative Consent Order ("ACO") with the New Jersey Department of Environmental Protection and Energy (NJDEPE) to this effect. Hexcel posted financial assurance for \$3,000,000 as required by this ACO. This amount was increased to \$4,000,000 as requested by the NJPDES Cleanup Plan Conditional Approval Letter dated July 31, 1990. As required by regulation, at a substantial annual cost, Hexcel continues to maintain this financial assurance.

An ECRA clean up plan was conditionally approved on July 3, 1990 and implementation of the plan has moved forward since then. According to this plan, it is anticipated that groundwater will be extracted from the upper and lower aquifers and treated on site for removal of volatile organic compounds by

using an air stripper, a filtration unit and a carbon adsorption unit.

The NJPDES/SIU Permit

Groundwater modeling studies of the site by Hexcel's environmental consultants estimate that the rate of discharge of treated groundwater from the treatment system will be approximately 6,300 gallons per day. The discharge would occur 24 hours a day. It is proposed that the discharge will be to the PVSC.

In May, 1990 and then again in January, 1991, a NJPDES permit application was submitted to the NJDEPE on behalf of Hexcel. In response to the initial application the Department advised that, given the nature of the discharge, an SIU permit would not be necessary for this facility. Thereafter, by letter dated December 4, 1990, the Department reversed its position, advising that an SIU permit would, indeed, be necessary.

After the second application for the NJPDES/SIU permit in January, 1991, our firm continued to follow up with your Bureau regarding the status of the permit. Unfortunately, the Department, in response to these inquiries, was generally unsure as to the permit status. This lack of adequate communication from the Department has resulted in considerable anguish for the management of Hexcel which has been unable to forecast the course of the ECRA compliance and unable to bring this ECRA case to completion without great expense to keep environmental consultants and engineers on hold and to maintain financial assurance while awaiting the approval of the NJPDES permit.

After almost eleven months of waiting, in December 1991, Mr. Thein, the case manager, informed us that a draft NJPDES permit (NJ0081507) had been issued. On January 9, 1992 we received a copy of the permit's Public Notice which was dated December 17, 1991.

Even the publication of the draft permit was a complicated, long procedure. Mr. Thein informed us that in accord with New Jersey's Administrative Procedure Act ("APA"), NJSA 52:14B-1 et seq., the draft permit would be published in the Bergen County local newspaper with the largest circulation. This paper is the Bergen County Record ("the Record"). We attempted to ascertain the date on which the notice would appear so as to be able to comment in a timely fashion and to determine when the public comment period would end. The problems which we had in getting this date from the NJDEPE illustrate the constant

delays encountered in this matter. Despite repeated phone calls to the Department about the date of the publication, we were informed either that the draft permit was in the process of being submitted or had already been submitted for publication in the Record. Indeed, we were informed that a copy of this notice had been sent to the Record on or about December 17, 1991. After our daily scrutiny of the Record for the next week did not reveal the notice, we telephoned the Department and were informed that the NJDEPE's request for publication of the draft permit had not apparently reached the Record. Thus, we were told that the draft would be resubmitted for publication and that we would be informed of the date of publication. We received no such phone call for the next two weeks. Finally, on February 21, 1992, after phoning the Record's public notice office, we were able to ascertain that the notice had been published in the February 3, 1992 edition of the Record. This triggered the original 30 day comment period which, therefore, ended on March 4, 1992. We were subsequently informed that the Fine Organics Corporation has requested an extension of the comment period for another 30 days.

Few adverse comments have been received regarding the draft permit. Indeed, to our knowledge only one letter dated March 4, 1992, raises any issues regarding the permit. The issues raised in that letter have been addressed by Hexcel. Significantly, as a result of the letter, Hexcel is applying for its own separate PVSC permit rather than using the facility's existing permit.

In accord with the APA, we were told that once the public comment period ended, the comments would be reviewed by staff at the NJDEPE and, if there were no consequential issues raised, the draft permit would be finalized. We thereafter periodically followed up with the NJDEPE beginning on April 27, 1992 regarding the permit's status.

On May 20, 1992 we were informed that the Department has now decided that an individual NJPDES/SIU permit will not be required for the facility. Instead, Hexcel's facility is apparently going to be included in a list of facilities which will be directly under the jurisdiction of the local sewage authority and therefore exempt from the requirement of an individual NJPDES permit. These listed facilities will have NJDEPE approved pre-treatment programs and, to avoid duplicative enforcement efforts, the local sewage authority will enforce discharge limits under the expanded scope of the Clean Water Enforcement Act, NJSA 58:10A-10.1 et seq. Additionally, these facilities will have a general NJPDES permit by rule and will not have their discharge levels supervised by the NJDEPE. When

we asked for a time table for publication of the list containing Hexcel's name, we were referred to Mr. Nilesh Naik, also of your Bureau.

We attempted to contact Mr. Naik on May 20, 1992 but were informed that he was on vacation and that no one else in the Department could give us any information on the list. We contacted Mr. Naik on May 22, 1992 when he returned from vacation and were told that a list containing the names of facilities with approved pre-treatment programs had already been prepared for public comment. Hexcel's name is not on that list. Mr. Naik stated that if many substantive comments are received on the existing list it will be revised and, at that point, Hexcel's name will be added. The list will then be circulated for public comment. If, however, the existing list does not receive such substantive comments, then it will be finalized in its present form and a different list with Hexcel's name on it will be prepared for public comment.

As is readily apparent, irrespective of the list on which Hexcel is included, the probability of still more delay exists before Hexcel will be able to discharge under this delegated program. This delay is unfair to Hexcel especially since it has already gone to considerable expense and trouble to comply with existing regulations to obtain a NJPDES/SIU permit. Indeed, as outlined above, more than two years have already passed since Hexcel initially applied for a NJPDES/SIU permit and in that intervening time Hexcel's representatives have always been available to meet or correspond with the Department. Because of these delays Hexcel has been unable to move forward with its ECRA commitments.

Conclusion

We offer the following observations on behalf of Hexcel:

(1) Hexcel has been involved in an ECRA case since March 1986 and has expended considerable time, effort and expense in cooperating with the NJDEPE to comply with the statute's requirements. This is one of the longest running ECRA cases and we believe that the various NJDEPE Bureaus should cooperate in bringing it to conclusion.

(2) Hexcel has been willing to remediate its groundwater and discharge it to the PVSC. To that end, Hexcel has done its utmost to obtain a NJPDES/SIU permit. It is unfair

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for the Department not to finalize the draft permit issued in December 1991 or to confirm that Hexcel is exempt.

(3) Hexcel should not be held hostage to the Department's policy vacillations. In May 1990 Hexcel was told it would need a NJPDES permit. Later, it was told it would not need one. Then in January 1991 Hexcel was told it would need a permit. Now, in May 1992, Hexcel has been informed it will be covered by a permit-by rule and will not require an individual NJPDES permit. Having Hexcel negotiate the terms of a permit three times; requiring Hexcel to follow up with the NJDEPE on the permit status; and keeping the ECRA case on hold while the NJDEPE authorizes the discharge of the treated groundwater is unjustifiable.

In light of the foregoing Hexcel respectfully requests immediate action on its permit. We recommend the issuance of a temporary permit-by-rule pending the finalization of the list of NJPDES/SIU exempt facilities. This course of action will allow Hexcel to complete its ECRA obligations and still allow the Department to delegate authority for its NJPDES permit enforcement program.

Thank you for your cooperation and immediate attention to this matter. I look forward to hearing from you at your earliest convenience.

Very truly yours,

Lisa M. Bromberg
Lisa M. Bromberg *cad*

LMB/MB/dwc

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cc: Mr. A. William Nosil (via telecopy)
Mr. Gary Sanderson, ECRA Cleanup Oversight Case Manager
(via telecopy)
Mr. Muhammad Shaikh, Supervisor, Environmental Engineer
(via telecopy)
Mr. Geoffrey Cromarty, Chief, Office of Permit Issuance and
Assistance (via telecopy)

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